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Human Rights Committee of the Italian Senate
Introduction to the report "Human Rights and Foreign Policy"

And Yet It Moves

Pietro Marcenaro

Principles and *realpolitik*, values and interests: the enquiry led by the Senate Special Committee for the Protection and Promotion of Human Rights is driven by these contradictory tensions inherent in foreign policy.

Such permanent, and in a sense structural, tension can lead to resignation and exacerbate opportunism, or it can fuel the search for ways to reduce these tensions, control and contain them within sustainable limits. The first, essential step for anyone who wants to choose the latter path is to assess critically, discuss openly and acknowledge explicitly their existence. Only in so doing can human rights, democracy and the rule of law be defended and upheld constructively. This forms an important part of a more overarching question: what steps are to be taken so as to ensure that economic, financial and market globalisation can go hand in hand with the gradual creation of participatory democracy? And what stage are we at in the process of redefining a more universal, global system?

Contrary to what we often hear, we are not at square one. In this situation, one could say "and yet it moves". It is not realistic to see the world as having a globalised economy and increasingly powerful financial system on the one hand, and a political vacuum lacking rules and democracy on the other. Such a view only serves to show disconcerting intellectual apathy.

What is in fact underway, at a slow pace riddled by difficulties and contradictions, but on a scale that would have been unthinkable only a few decades ago, is the creation of new regulatory structures, new models of global governance and new institutions. Indeed, such a shift towards a more universal regulatory system perhaps needs to occur slowly in order for it to take place peacefully. If we want to tackle these problems without them turning into dramatic conflicts, a certain physiological slowness is required to guarantee profound and gradual change. This is a momentous opportunity to redefine the relationship among states and eliminate the principle of national sovereignty on a series of key issues. An impatient approach would be one that fails to recognise all the implications of this veritable revolution, which seeks to transfer the powers of individual states on certain decisive matters towards supranational institutions. The mere possibility of envisaging an entirely new system compared to that which, after the Thirty Years' War and the



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Peace of Westphalia in 1648, became the basis for the international order can hardly be considered a simple, linear process.

There is no single solution to the quandary between universality and specificity, equality and difference, in the cultural sphere either. Here too there is continuous tension that needs to be curbed, controlled and accepted. Such acceptance is not only characterised by harmony and happiness but also – and more often – by pain and struggle. Each achievement obtained in the construction of a supranational democracy is all the more important because it is the result of a battle against the ingrained habits of traditional power structures.

Contradictions, contrasts and conflicts over the past few decades have nevertheless not prevented the creation of an entirely new scenario that would have previously been unthinkable. Institutions such as the United Nations, which can be seen from one standpoint as ancient relics of the post-war era, from another viewpoint show a completely different set of features.

In the 1950s, Norberto Bobbio expressed his concern that the Universal Declaration of Human Rights (approved 10 December 1948), whilst enshrining important principles, was doomed to remain on paper, but today this is far from being the case. Those principles have not remained mere declarations of intent. They have been translated into practice and have led to a series of treaties and international agreements signed by various countries and ratified by parliaments which constitute the pillars of international law.

Clearly there is also another side to the situation: a UN Security Council still steeped in the logic of Yalta, veto rights, double standards, and power play. However, just like the eye and the mind can give meaning, perspective and even life to the initially incomprehensible images of a stereogram, so too the great international institutions, if we care to take a close look, are actually stirring from their Jurassic state and moving forward into new eras.

In recent months, as I drafted the conclusions of this Committee's report on Italian prisons, I wrote that the violation of human rights is not only the violation of a moral law, but also the violation of legality. Human rights are not simply a worthy ethical stance. Fortunately, they are also recognised, ratified, protected and guaranteed by international treaties, regulations and agreements which bear legal weight.

Today, we tend to take the protection of human rights for granted. However, we should not overlook the processes that created our current social and institutional structures, or the difficult and controversial journey that led to the treaties and agreements which now mark out the new boundaries of international law. Such treaties have been signed by many countries, and although some are far from complying with them, they are tools enabling the international community to better protect human rights throughout the world.



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New institutions have been established and have increasingly gained ground: let us take for example the International Criminal Court (now celebrating its tenth anniversary), and the *ad hoc* tribunals such as that on war crimes for former Yugoslavia, Darfur and Lebanon. I know full well that this is not always a smooth process, and that great powers like the United States, Russia and China ask the International Criminal Court to intervene in other countries while refusing to be subjected to its jurisdiction themselves.

There is much to learn from the structure and approach of an important institution like the Human Rights Council, based in Geneva and established by the United Nations General Assembly. This facility uses the tools of observation, reporting, discussion and dialogue. All UN member states are subjected to a UPR (Universal Periodic Review) every four years, which for Italy took place in 2010. The country under review submits a human rights report, as do civil society associations; the Human Rights Council makes its own observations; the relevant national Government then offers motivated responses to these observations; and finally the Council issues a series of recommendations. It is a public process, which all civil society organisations can participate in by raising questions and expressing recommendations. In June 2010, Italy received 92 observations regarding immigration policy and the state of our prisons, among other topics. This approach highlights the need to move beyond double standards, which have been and continue to be one of the main obstacles to human rights policies, if any real governance is to be affirmed. Equal evaluation criteria must be applied to all countries, rich or poor, Christian or Muslim, allies or not.

Who could have imagined only a few decades ago that the European Court of Human Rights, established by the European Convention of Human Rights and open to citizens of the 47 member states of the Council of Europe including Russia, Turkey, Ukraine, Azerbaijan, Armenia, Georgia, Moldova, would play such a fundamental role? Any citizen from any member state can turn to the Court thanks to a principle that should not be underestimated: human rights are defended by the State, but can also be defended against the State. An appeal can be lodged before the ECHR in Strasbourg against one's own State, as long as certain conditions and procedures are adhered to. There are currently 150 thousand cases pending in which European citizens have accused their own Governments of violating the European Convention on Human Rights, and Italy too has been found guilty on various occasions, through rulings made final by the Grand Chamber. Constitutional Courts have ruled that sentences issued to all these countries, including our own, by the European Court of Human Rights create case law. As a result, a supranational legal system has been established which individual states need to abide by, in adapting their own legislation and behaviour.

Similar institutions have been established in other parts of the world, such as Latin America. Such is the case of the Inter-American Court of Human Rights.



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Neither can we talk of the process of creating a new international governance without mentioning the role played by key UN Agencies, such as for example the Global Fund to combat pandemics (which has spoken at committee meetings in other contexts), or that of large-scale organisations which give a voice to civil society.

Allow me to mention here, among the many others, the UNHCR. The UN Agency for refugees, deals with a challenge of apocalyptic proportions on behalf of the international community, and in so doing reminds us that immigration, asylum and refugee rights can no longer just be considered matters of domestic policy.

I would also like to mention the various volunteer organisations and associations which, over the course of time, have become important guiding lights and actual public authorities with an active role in international institutions, such as the United Nations. Amnesty International, for instance, is one the most influential defenders of human rights, with no State beyond the reach of its reports. The same applies to Human Rights Watch, Doctors Without Borders and Reporters Without Borders. These organisations serve to show the sheer force of public opinion, further strengthened by its increasingly active role in our information-based society and online networks. Clearly, there are differences from one country to another, but not even dictatorships can ignore this force. It is also thanks to the influence of public opinion that international economic partnership and international cooperation agreements increasingly include cross-compliance requirements on human rights and fundamental freedoms.

Academics and specialised agencies assert that there have never been so many democracies present in the world, and this is apparent both in Europe and elsewhere. Let us think for example of the changes following the collapse of the Soviet Union in Europe and Central Asia and the repercussions on the Council of Europe. Or events in Latin America, previously characterised by coups and military dictatorships and now the site of thriving democracies. Not to mention the changes heralded by the Arab Spring of 2011.

Such transformations challenge the role of more mature democracies: what can they do to support human rights, democracy and the rule of law? The sacrosanct concept of democracy as not exportable cannot come to mean passivity in the face of human rights violations, which continue to be severe in many countries.

For the sake of a focused discussion, we should look at the different planes at stake. The announced withdrawal of US and NATO troops over the next two years marks the end of a long and dramatic chapter that began with the 9/11 attacks in 2001 and unfolded through the wars in Iraq and Afghanistan. This long decade's events have been followed throughout the world and have left a bitter aftermath.



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However, if we do not want this negative outcome to result in the international community renouncing its attempts to uphold democracy and human rights, if we want to prevent countries from closing in on themselves (with the largest and strongest first and foremost), there is much need for reflection and public debate. Consider this: in Afghanistan, the ratio of resources allocated for military spending compared to civilian investment was 95 to 5. This shows the need for policies to distance human rights issues from the context of war, and reconcile them rather with peace.

The Arab Spring had and has the potential to usher in a new era in which rule of law and human rights become an integral part of the democratic debate. But current events in Syria, and recent events in Libya, reveal the very legitimate fear that old regimes (big, small, medium) could return, and that individual countries might allow their own particular interests to prevail.

The alternative to exporting democracy is to provide recognition and support to the forces within each country seeking to defend human rights and attain greater freedom. Democracy can grow when its strength in society grows. That is why human rights defenders are of paramount importance and are such a focal point of debate for international institutions. Here, more progress can be made in recognising, legitimising, listening to and regularly meeting with the champions of human rights and democracy in various nations.

Clearly, this approach to foreign policy requires dialogue, negotiation and regular monitoring, as well as the ability to forge diplomatic relations based on discretion, confidentiality and transparency which give space to public opinion and allow broad participation.

If the European Union and its new Foreign Service established under the Treaty of Lisbon were to act with a view to giving greater coordination and coherence to the choices and actions of member states, this would be an incredibly significant and effective move.

Even when it comes to seemingly trivial issues such as website design, state visits and national celebrations, ambassador's country reports, and diplomat meetings, the EU – through its External Action Service – could help define shared standards for member states that would strengthen political and diplomatic support for human rights and the rule of law. Indeed, the Italian Foreign Ministry could also make innovative choices in this regard.

On another note, Europe's partnership agreements with Arab Spring and Central Asian countries are also an opportunity to be seized. Discussions regarding membership requirements are a way for these countries to be encouraged to move towards greater democratisation. Suffice it to think of the role of the EU perspective in the democratisation processes of many countries in Central and Eastern Europe after the fall of the Berlin wall. It was, after all, by no means certain that Poland, Hungary, Romania, Latvia, Lithuania, Estonia, Bulgaria, the Czech Republic and Slovakia would become fully-fledged democracies.



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At the heart of the Senate Human Rights Committee's enquiry is the following question: what balance can be achieved between principles and *realpolitik* in Italian and European foreign policy? The emphasis is on the word 'balance', given that any hope of eliminating *realpolitik* altogether from foreign policy is entirely unrealistic. If push came to shove in a tug-of-war between values and interests, values would carry the day in the battle of words, but interests would win hands down in the realm of facts. The only way to achieve any real result is therefore by searching for some form of balance.

The very notion of human rights as universal should not be taken for granted. Many countries see the West's position on human rights as an aggressive policy aimed at imposing its own model on the rest of the world. Here too, a balance must be found between universality of human rights and respect for cultural differences. This is essential if we want to avoid the trap of cultural relativism, which clears its conscience by paying lip service. In order for human rights to be applied universally, the concept needs to be distilled into its essence: the defence of individual dignity and freedom, the essential conditions needed for human beings to exist side by side. It is worth noting that if everything becomes a human rights issue, then there is no such thing as human rights.

A balance must also be struck between political rights and liberty, given pride of place by Western democracies, and economic and social rights, which are in turn considered priorities in many other parts of the world. Unless human rights are also taken to mean health, access to food and water, we will never be able to communicate these principles to much of the world.

Finally, all too often in the past few years has the expression 'human rights' been used in association with war and bombings. The decision to intervene in Libya bears witness to the mistakes and contradictions that these actions contained. Events in Libya serve to confirm that when politics stops thinking about human rights and focuses only on economic interests, oil, supplies, building motorways, the issue ends up simmering under the surface until it boils over dramatically and can no longer be ignored.

Europe cannot allow another Srebrenica. It cannot permit the extermination of thousands of people on its doorstep. However, there can be no such prevention unless human rights form a permanent and structural part of political action, unless they are assessed alongside long and medium term processes, and unless we try to guide these processes or at least mitigate their consequences. The alternative is for human rights to come to the fore only when they become humanitarian emergencies, tragedies which give politics no other alternative except war or cowardice.

Possibly the most important issue facing foreign policy and the international community in this new phase is the need to rebuild the relationship between human rights and the fight for peace.



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The establishment of the European External Action Service risks becoming a missed opportunity if it fails to place an on-going, coordinated defence of human rights, democracy, peace, development and the fight against hunger at the heart of European foreign policy.

If Nadia Urbinati's definition of democracy as cacophony rather than harmony can be applied within each individual country, it is all the more applicable at supranational level. Undeniably there is many a reason for the contradictions present and the slow pace of progress. However, I would go as far as to argue that this slow, limping pace, which can at times be so unbearable and seemingly condemns the fight for human rights and democracy to live in a state of permanent suffering, may in a sense be the necessary precondition to avoid the defence of human rights being associated with war (as has often occurred in recent years). Perhaps the transformation of human rights into humanitarian emergencies (with the subsequent use of force that often ensues given that by this stage no other options are available) is simply the end result of a *realpolitik* that reduces international relations to the interests at stake.

A slow pace is in fact the very opposite of an emergency. It operates not in the short term, but in the long and medium term. By recognising the importance of acting within a more extended time frame, human rights can become part and parcel of a foreign policy that does not oppose principles and interests, political realism and values. A foreign policy that avoids the negative repercussions of intervention because it is better acquainted with the social and political subjects of change, and can therefore accompany them, acknowledge their presence and seek their opinion in order to achieve concerted action.